

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

Noel Hernandez,

Defendant.

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Criminal No.: 04 CR 10319 WGY

MOTION FOR LEAVE TO FILE MOTION TO SUPPRESS
IN-COURT AND OUT-OF-COURT IDENTIFICATIONS LATE

NOW COMES the Defendant, Noel Hernandez, through counsel, and respectfully moves this Honorable Court to permit the Defendant to file the attached Motion to Suppress In-Court Out-Court Identifications and Incorporated Memorandum of Law. In support thereof, counsel states the following:

1. On or about December 8, 2004, this Court established a deadline of February 1, 2005, for the parties to file substantive motions.
2. Recent discovery provided by the Government on February 14, 2005, has alerted undersigned counsel to an issue relating to the identification of the Defendant by his codefendants.
3. Based upon a report authored by DEA Special Agent Diorio, it appears that at least one of his codefendants was shown a photograph of the Defendant while all three defendants were detained at Logan Airport.
4. Upon information and belief the undersigned believes other more suggestive identification procedures were also used.
5. Such procedures are contrary to current Department of Justice guidelines and obviously highly suggestive in violation of the Defendant's rights.

6. It is not clear at the present time whether the Government intends to use this out-of-court identification procedure at trial and/or use an in-court identification procedure.

7. Accordingly, in order to fully protect the Defendant's rights, it is necessary to file the attached Motion to Suppress Any In-Court and Out-of-Court Identifications and Incorporated Memorandum of Law.

8. The undersigned counsel does not believe that the litigation of this issue will affect the current trial date of May 9, 2005.

WHEREFORE based on the foregoing arguments and authorities this Honorable Court is respectfully urged to grant the Defendant leave to file a late Motion to Suppress In-Court Out-of-Court Identifications and Incorporated Memorandum of Law.

Respectfully submitted,



Peter Charles Horstmann, Esquire
BBO #556377
PARTRIDGE, ANKNER & HORSTMANN, LLP
200 Berkeley Street
Boston, Massachusetts 02116
(617) 859-9999

Attorney for Defendant
Noel Hernandez

CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this 2nd day of March, 2005, a copy of the foregoing DEFENDANT DISCOVERY MOTION was served electronically upon William Bloomer, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210.



Peter Charles Horstmann, Esquire